

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF
INDUSTRIAL ACCIDENTS

BOARD NO.

**PETITION FOR APPROVAL OF
THIRD PARTY SETTLEMENT UNDER G.L. c. 152, §15**

_____	Plaintiff/Employee
_____	Employer
_____	Workers' Compensation Insurer
_____	Third Party
_____	Third Party Insurer

The above-named parties request approval of a third party settlement under G. L. c. 152, §15. Following are the terms and conditions of the settlement.

1. The plaintiff/employee and the workers' compensation insurer are entitled to a hearing before the board or the reviewing board acts on the petition. Do the parties: (please check one)

_____ Request such a hearing?

_____ Waive their right to a hearing?
2. Describe in detail the accident, event, incident or series of incidents which forms the basis for the workers' compensation claim and the third party claim.
3. Briefly describe the injuries and the course of medical treatment.
4. Set out the periods of incapacity.

5. Set out the amounts paid by the workers' compensation insurer under the following sections of c. 152.

§ 30	\$ _____	§ 34B	\$ _____
§ 31	\$ _____	§ 35	\$ _____
§ 33	\$ _____	§ 36	\$ _____
§ 34	\$ _____	§ 48	\$ _____
§ 34A	\$ _____	Other	\$ _____ (identify section(s) under which payments made)

TOTAL PAYMENTS: \$ _____

6. Why is settlement advisable?

7. What is the total amount of the proposed third party settlement?
\$ _____

8. For purposes of § 15, "excess" means the amount by which the gross tort settlement paid to the plaintiff/employee exceeds the total amount of c. 152 compensation paid. What, if any, is the amount of the "excess"?

Gross settlement (1) \$
Less: Any allocation to family members (2) \$ _____

Subtract (2) from (1) and enter result (3) \$

Less: Total compensation payments (from #5 above) (4) \$ _____
Subtract (4) from (3) to arrive at the "excess," if any. (5) \$

9. How much, if any, of the proposed third party settlement will be allocated to the plaintiff/employee's family, or next of kin, who have claims arising from the injury?

Allocation for family members (1) \$

Less: Legal fee & expenses from this allocation (2) \$ _____

Net payment to family members (3) \$

10. After any allocation to family members [from #9(1)], how will the third party settlement be apportioned among the plaintiff/employee, the workers' compensation insurer, and plaintiff counsel?

Plaintiff/employee	\$ _____
Workers' compensation insurer	\$ _____
Legal fee	\$ _____
Legal costs	\$ _____
TOTAL:	\$ _____

11. What percentage of the gross settlement is payable to plaintiff counsel under the terms of the contingent fee agreement (i.e. \$ _____ fee plus \$ _____ costs = \$ _____ total. When this total is divided by the gross tort settlement (\$ _____ %), the result = _____ %)

12. G.L. c 152, § 15, provides that the "... attorney's fees shall be divided between the insurer and the employee in proportion to the amounts received by them respectively..." How will legal fees and costs be apportioned?

Legal Fee

Costs (if any)

Paid by: Plaintiff/employee \$ _____ Paid by: Plaintiff/employee \$ _____

Paid by: Comp Insurer \$ _____ Paid by: Comp Insurer \$ _____

TOTAL FEE: \$ _____ TOTAL COSTS: \$ _____

13. **Unless the parties have agreed otherwise**, the amount of the plaintiff/employee's recovery to be offset against any future c. 152 payments to the employee is determined by subtracting the plaintiff/employee's legal fees and costs [from #12 above] from the statutory excess [# 8(5) above]. What amount, **if any**, will be offset against any future c. 152 payments to the employee?

14. In the event the plaintiff/employee establishes entitlement to future c. 152 compensation payments, set out the agreement between the plaintiff/employee and the workers' compensation insurer with regard to reimbursement of the employee's proportionate share of counsel fees and expenses as provided by Hunter v. Midwest Coast Transport, Inc. et al., 400 Mass. 779 (1987).

Suggested form of answer:

The insurer will pay _____% (from #11 above) of any future c. 152 benefits until the plaintiff/employee has been reimbursed for his/her share of attorney's fees and costs in the amount of \$_____ (from #12 above) and the workers' compensation insurer has exhausted its offset of \$_____ (from #13 above). Thereafter the workers' compensation insurer will pay 100% of any c. 152 benefits which become due.

15. List any amounts paid to the plaintiff/employee by the Workers' Compensation Trust Fund under the provisions of G. L. c. 152, § 65, subsections:

- (2) (d) (payment of vocational rehabilitation benefits under to G. L. c. 152, § 30H)
- (2) (e) (payment of approved claims to employees of uninsured employers)
- (2) (f) (payment of approved fellow-worker claims under to G. L. c. 152, § 26)

16. List any amounts paid to the workers' compensation insurer by the Workers' Compensation Trust Fund under G. L. c. 152, § 65, subsections:

- (2) (a) (reimbursement of cost-of-living adjustments under G. L. c. 152, §§ 31, 34A)
- (2) (b) (reimbursement of adjustments to weekly benefits under G. L. c.152, § 35C)
- (2) (c) (reimbursement of payments relating to second injuries under G. L. c. 152, § 37)
- (2) (g) (reimbursement of payments relating to second injuries under G. L. c. 152, § 37A)

17. a. If expenses are being reimbursed attach receipted bills or other appropriate proof of payment. **Send one copy only.**
- b. If the workers' compensation case has been settled, or is proposed for settlement, attach a photocopy of the proposed lump sum agreement. **Send one copy only.**
- c. Attach a copy of the contingent fee agreement or explain the absence of such an agreement. **Send one copy only.**

Signed under the penalties of perjury this _____ day of _____, 20 _____.

/s/_____
Plaintiff/Employee

NAME
ADDRESS
TEL. #

/s/_____
Attorney for Plaintiff/Employee

NAME
ADDRESS
TEL. #

/s/_____
Attorney/Representative for Workers'
Compensation Insurer

NAME
ADDRESS
TEL. #

/s/_____
Attorney/Representative for Third
Party Insurer

NAME
ADDRESS
TEL. #

/s/_____
Attorney for the Workers' Compensation Trust Fund
(Only if amounts are listed in Question #15 or #16)

NAME
ADDRESS
TEL. #

The foregoing petition adequately recites the terms, allocations and reasons for the settlement of the third party claim. Accordingly, the reviewing board or the board approves the petition. If the insurer recovers previously paid workers' compensation benefits as a result of this settlement, it shall submit a revised statistical unit report to the appropriate rating bureau within sixty (60) days of recovery. G. L. c.152, § 53A (4).

DATE:

Administrative Law Judge
for the Reviewing Board

or

Administrative Judge
for the Board

INSTRUCTIONS:

Send the original agreement and four copies together with a large self-addressed envelope with sufficient postage affixed. We will retain the original and return the copies to you for distribution. Send the complete package to: **DIA, Central Scheduling Unit, 600 Washington St., 7th Floor, Boston, MA 02111.** For a § 15 Petition to be heard together with a Lump Sum settlement under § 48, send cover letter requesting a conference before a judge together with one copy of the Petition and one copy of the Request for Lump Sum to the above address.